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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/523,300

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Rodolfo Panatta

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05/30/2008

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EXAMINER

NGUYEN, TAM M

ART UNIT

PAPER NUMBER

3764

MAIL DATE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/523,300	<b>Applicant(s)</b> PANATTA, RODOLFO	
	<b>Examiner</b> TAM NGUYEN	<b>Art Unit</b> 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 February 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 1 is objected to because of the following informalities:

In claim 1, on line 4 are the phrases "the user" and "the training session". They should be replaced by --a user-- and --a training session-- respectively. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, claim 1 does not disclose a transitional phrase such as "comprising" or "consisting of". A transitional phrase is required to define the scope of the claim. Furthermore, the following phrases, "of the type", "actuated by", "can enable" and "is directed onto" further muddle the subject matter of the claim since these phrases merely disclose how various components may work together or how they can be used yet many of the components have not been positively recited as being part of the invention. Examiner will assume that the invention includes an exercise device having a flywheel with reflecting marks, pedals, an electronic control unit, a keyboard, a display, a speed sensor and a strobe light that assist a user to maintain a certain speed during exercise to expedite the prosecution. Note, the phrase "characterized in" is not a

recognized transitional phrase. Claims 2-5 are also rejected as being dependent on a rejected base claim. Claims 2-5 are also rejected since they appear to disclose how the invention is used, a method of use or how the invention works as opposed to what the invention comprises. As to claim 5, it is not clear what is meant by the phrase "the date on the execution modes". The examiner will assume that the phrase refers to instructions sent by the control unit to a central computer to expedite the prosecution.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whan-Tong et al. (6,939,271) in view of Salles (2,437,048).

3. As to claim 1, Whan-Tong discloses an exercise device comprising a flywheel (24) actuated by pedals (27) and an electronic control unit (190) interfaced to a suitable keyboard (80) and display (76) that is capable of measuring the speed of the flywheel by means of a sensor (180) and a strobe light and showing the speed on the display wherein the speed/desired workout level can be maintained by the control system (see Col. 8, lines 15-26, Col. 9, line 55 – Col. 10, line 11 and Figs. 11, 12, 14 & 16). Whan-tong does not disclose that the stroboscopic light is directed onto one or more reflecting marks mounted on the surface of the flywheel. Salles discloses an apparatus for

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determining the speed of a rotary element wherein a stroboscopic light/photo-electric head light (G) is directed onto one or more reflecting marks (31,32) mounted on a surface or a rotary member (see Col. 1, lines 12-24, Col. 2, line 28 - Col. 3, line 2 and Figs. 1 & 2). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine Salles' reflecting marks with Whan-Tong's flywheel such that the speed of the flywheel can be directly measured without the need for the strobe wheel thereby saving manufacturing costs. Note, the term "gym bike" has been considered but given no patentable weight since the body of the claim does not include any components specific to a bike.

4. As to claim 3, Whan-Tong and Salles discloses a modified exercise device as described above. Whan-Tong further discloses that the speed to be maintained/certain parameters is set on the electronic control unit with the keypad (see Col. 9, line 67 - Col. 10, line 11).

Claims 1 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whan-Tong et al. (6,939,271) in view of Salles (2,437,048) and in further view of Watterson et al. (US 2004/0127335).

5. As to claim 4, Whan-Tong and Salles discloses a modified exercise device as described above (see discussion of claim 10). Whan-Tong does not disclose the control unit is connected to the bike in a wireless manner via two-way radio transmitters. Watterson discloses an exercise device that utilizes radio transmitters to convey control signals (see Claim 37). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine Watterson's radio signal control means with

Whan-Tong's device such that the desired speed can be wirelessly transmitted from the control unit to the bike and the control unit can be remotely located from the bike.

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Kolomayets et al. '244 discloses an exercise device having a mechanism for calculating angular velocity wherein the mechanism includes an optical detecting sensor (60) having a notched wheel such that a light emitter continuously emits light on the notched wheel and the light that passes through the rotating wheel is sensed and an electrical signal characterizing the light is transmitted (see Col. 5, lines 15-27).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TAM NGUYEN whose telephone number is (571)272-4979. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on 571-272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

May 23, 2008  
/Tam Nguyen/  
Examiner, Art Unit 3764

/LoAn H. Thanh/  
Supervisory Patent Examiner, Art Unit 3764